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No. 16-373

In The
Supreme Court of the United States

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM,
Petitioner,

v.

ANZ SECURITIES INC., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF CURRENT AND FORMER DIRECTORS OF PUBLICLY TRADED COMPANIES: CHARLES M. ELSON AND HOWARD B. WIENER, AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the timely filing of a valid class action satisfy or toll the three-year filing period set by Section 13 of the Securities Act of 1933 with respect to subsequent opt-out suits by individual class members?

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INTEREST OF *AMICI CURIAE*[1]

Amici have served or are currently serving on the boards of publicly traded companies and together have years of experience in corporate governance and the economic realities of securities litigation. They

[1] This brief is filed with the written consent of all parties. Petitioner has a universal letter of consent on file with the Clerk; Respondents' letter of consent is filed with this brief. No counsel for either party authored this brief in whole or in part, and no person or entity other than the *amici* or their counsel made a monetary contribution to the brief's preparation or submission.

write to share their informed view that the judicial efficiencies and rational litigation conduct fostered by *American Pipe* protect not only investor-plaintiff interests, but also those of corporate defendants, and ultimately, the bottom line that benefits all.

Charles M. Elson holds the Edgar S. Woolard Chair in Corporate Governance at the University of Delaware. He has served on many corporate boards, and currently sits on the boards of two publicly traded entities. He holds various not-for-profit directorships and has published widely on issues of corporate governance. Professor Elson's myriad professional affiliations include service as a member of the Standing Advisory Group of the Public Company Accounting Oversight Board.

Justice Howard B. Wiener (ret.) served for years on the California Court of Appeal and has been engaged in private dispute resolution since January 1994, serving in more than 5000 cases as a mediator, arbitrator, and private judge. His assignments have included business disputes, intellectual property, professional liability, and insurance coverage encompassing bad faith litigation, product liability, and environmental cases. He has also handled scores of class action lawsuits including securities fraud litigation. Justice Wiener has served as a director on the boards of publicly traded corporations and, in that capacity, was named as a defendant in a derivative action.

Justice Wiener's experiences as a corporate director and his years as a judge and mediator lead him—along with Professor Elson—to support procedural approaches in securities cases that

promote the efficient and expeditious resolution of conflicts, encourage the dedication of scarce resources to the most meritorious cases, and avoid needless litigation. Applying *American Pipe* to the three-year bar of Section 13 of the Securities Act, 15 U.S.C. § 77m, does just that.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The *American Pipe* rule is part and parcel of a sound structure of class and individual litigation that benefits plaintiffs and defendants alike. Particularly in the securities litigation context, the parties have a shared interest, repeatedly endorsed by Congress, in fostering representative class actions that are strongly litigated by lead plaintiffs in one venue, under one timetable, minimizing discovery costs and allowing expeditious resolution. But a proliferation of separate actions across multiple venues will inevitably result if unnamed class members are not able to rely on the timely filing of a class action to satisfy Section 13's time bars.

Corporate directors have a strong interest in minimizing litigation, which is time consuming and drains resources from the core business of producing goods and services of value. Applying *American Pipe* serves this interest without any damage to the repose provided by Section 13's three-year bar. Because a timely-filed class action complaint suffices to provide defendants with effective notice of the basic character of potential claims and the identities of the claimants, no repose interests remain to protect after the class action has been filed. Depriving putative class

members of their ability to rely on the timely filing of the class action to protect their rights will, however, yield a flood of protective actions. Defendants' interest in efficient resolution of claims will be undercut, with no additional or more certain repose gained in exchange. Over-enforcement of Section 13's three-year bar will, perversely, generate more litigation, not less.

The measured course of fewer and better litigated cases that is charted by *American Pipe*, moreover, is fully aligned with the direction of securities litigation reforms undertaken by Congress in the decades since *American Pipe* was decided—reforms that aim to streamline securities class actions and promote quality over quantity. Despite repeated amendments to the securities statutes (including to the time limitations at issue in *Lampf*), Congress has never seen fit to disturb the operation of the sensible and well-settled procedural regime established in *American Pipe*. With reason. The *American Pipe* rule not only promotes the sound administration of justice, it is consonant with congressional intent in reforming procedures for securities litigation.

ARGUMENT

I. JETTISONING *AMERICAN PIPE* WILL HARM CORPORATE DEFENDANTS.

A. The *American Pipe* Rule Fosters Efficiency and Judicial Economy.

The anchoring concept of this Court's ruling in *American Pipe* is that the representative nature of a class action determines when a suit is "commenced" for putative class members. *See American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 550-552 (1974). For purposes of timeliness rules, class members who later intervene stand "as parties to the suit," *id.* at 551, and are deemed to have filed suit simultaneously with the filing plaintiff. "A contrary rule," the Court reasoned, "would deprive Rule 23 class actions of the efficiency and economy of litigation which is a principal purpose of the procedure." *Id.* at 554.

In *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983), the Court unequivocally extended *American Pipe*, clarifying that the Court would consider unnamed plaintiffs to have sued with the filing of the original class action complaint, whether the class members moved to intervene (as in *American Pipe*) or later opted out of the class to bring their own suit (as was the case in *Crown*). Without such guarantee, the "same inefficiencies" would result, and putative class members in fear of denial of class certification "would have every incentive to file a separate action prior to the expiration of [their] own period of limitations." *Id.* at 351.

Encouraging parties to file separate actions directly undermines the purpose of class actions: to "[s]ave the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982). To function as intended, the filing of a class action creates a "classic legal fiction," under which "courts treat members of the asserted class as if they hav[e] instituted their own actions, at least so long as they continue to be members of the class," and they therefore have the benefit of tolling "for as long as the class action purports to assert their claims." *State Farm Mut. Auto Ins. Co. v. Boellstorff*, 540 F.3d 1223, 1229 (10th Cir. 2008). Class actions thus are "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011).

Because *American Pipe* is a rule crafted to promote the judicial efficiencies of class actions, not to protect individual litigants, it applies even to absent class members who "did not rely upon the commencement of the class action (or who were even unaware that such a suit existed)." 414 U.S. at 551. Thus every putative class member, independent of individual conduct, has satisfied any time limits applicable to commencing his or her action once the class action itself is timely filed. *See also Devlin v. Scardalletti*, 536 U.S. 1, 10 (2002) ("[N]onnamed class members are ... parties in the sense that the filing of an action on behalf of the class tolls a statute of limitations against them.") (citing *American Pipe*).

American Pipe, in short, is an established feature of federal civil procedure: a judicially-crafted rule in furtherance of sound judicial administration that applies to all class actions, including securities litigation. Nothing in Section 13 purports to change this generally-applicable procedural rule, or otherwise affects investors' incentives to pursue individual over class relief. And because the *American Pipe* rule applies only when a class action has been timely filed, it neither excuses untimeliness nor disturbs repose. Instead, it aids all parties, and the courts, through avoidance of a "multiplicity of activity" in those cases where a class action is found "superior to other available methods for the fair and efficient adjudication of the controversy." *American Pipe*, 414 U.S. at 551 (quoting Rule 23(b)(3)).

B. Defendants' Interests in Repose Are Amply Protected Under *American Pipe*.

Defendants' interests in repose served by Section 13's three-year bar are safe under *American Pipe* even assuming Section 13 is treated as a statute of repose. *Accord* Pet. Br. at 33-34; 39-43. As this Court recognized in *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2182 (2014), statutes of limitations and statutes of repose both "operate to bar a plaintiff's suit, ... [b]ut the time periods specified are measured from different points, and the statutes seek to attain different purposes and objectives." The three-year limit in Section 13, like a statute of repose, "puts an outer limit on the right to bring a civil action," *id.*, that is triggered by an event certain and unrelated to any discovery of wrongdoing. *See* 51 Am. Jur. 2d

Limitation of Actions § 4 (2014) (collecting cases). Statutes of repose assure defendants that if no action is brought within the time set by the legislature, they will be free from liability. *CTS Corp.*, 134 S. Ct. at 2183.

When a class action is filed within the three-year time limit, continued litigation of the claims encompassed within that action beyond the three-year period is fully consistent with the interests served by a statute of repose. The class action provides defendants notice "not only of the substantive claims being brought against them, but also of the number and generic identities of the potential plaintiffs, who may participate in the class," *American Pipe*, 414 U.S. at 555, before the three years run out and any right to absolute repose kicks in. Whether plaintiffs remain part of the class action, or eventually file their own suits, defendants know they are potentially liable to all putative class members. It matters not, for purposes of the limitations period, whether such actions eventually proceed collectively or individually, or how long they take to finish. All that matters for the interest in repose is that the action was commenced within three years of the triggering event (here, the registration or sale referenced in Section 13).

It follows that where, as here, a class action is timely filed, applying *American Pipe* simply does not intrude on interests protected by the limitations rules, whether the three-year period is treated as a statute of limitations or a statute of repose. Defendants have received notice and are protected against stale

evidence once the original class action is timely filed. *See Young v. United States*, 535 U.S. 43, 47 (2002).

And interests in timely filing that are particularly pronounced in the securities litigation context are likewise satisfied by applying *American Pipe*. Because *American Pipe*'s commencement rule applies only if the original class action is timely filed, any opportunity for investors to sit on the sidelines for decades and wait for a precipitous drop in price before filing suit based on a technical violation is avoided, and the repose promised by Section 13 is protected. *See* 78 Cong. Rec. 8199 (May 7, 1934) (recognizing that absent a limitations period, an investor finding a "technical mistake" need not sue if the price goes up but would have the option to sue if the security price goes down); *see also Tregenza v. Great Am. Commc'ns Co.*, 12 F.3d 717, 722 (7th Cir. 1993) (noting that time limits prohibit "opportunistic use of federal securities law" and that if plaintiffs were permitted to "wait[] patiently to sue," ... "[i]f the stock rebounded from the cellar they would have investment profits, and if it stayed in the cellar they would have legal damages. Heads I win, tails you lose.").

Application of *American Pipe* avoids this "heads I win, tails you lose" problem. Whether the time bar is triggered by plaintiff's actual or constructive knowledge, as under the one-year rule, or runs from the date a security was offered to the public, as with the three-year bar, the defendants' interests are equally protected once the original class action is timely commenced, as the contours of a "plaintiff's opportunity for recovery and a defendant's potential liabilities" are established. *Young*, 535 U.S. at 47.

At bottom, "[s]tatutes of limitations are intended to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli v. SEC*, 133 S. Ct. 1216, 1221 (2013). During the pendency of a timely-filed class action, the claims are wide awake, and defendants know it.

C. Refusing to Allow Putative Class Members To Satisfy Section 13 Through the Filing of the Class Action Undermines Defendants' Interests in Efficient Resolution of Securities Claims.

Although there is no danger to defendants' repose interests from application of *American Pipe*, refusal to apply *American Pipe* to Section 13's three-year limitations period would gravely undermine *American Pipe*'s protection of defendants' interests in streamlined and minimal-cost resolution of securities claims. *Accord* Pet. Br. 22-25.

As predicted by this Court, failure to allow the filing of a class action to satisfy the limitations period for putative class members will lead to a flood of protective filings, as they "would have every incentive to file a separate action prior to the expiration of [their] own period of limitations," *Crown, Cork & Seal Co.*, 462 U.S. at 351, out of fear that class certification would be denied, to preserve their ability to control their own individual litigation in the future, or to protect against any number of other contingencies. And defendants, like plaintiffs and courts, will pay the price of this proliferation of individual claims—

without obtaining any additional benefit in terms of repose.

1. Investors—particularly those with fiduciary obligations—will be compelled to file separate actions to protect their interests in the event of some deficiency, or perceived risk of deficiency, with the class action. Class certification proceedings generally take a very long time in securities litigation; the *median* time from the filing of a securities class action complaint to a decision on class certification is about 2.4 years. Svetlana Starykh & Stefan Boettrich, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review*, at 20 (2016).[2]

A recent study by law professors examining the number of cases in which class certification procedures overran repose periods in securities class actions estimated that if *American Pipe* did not apply, protective individual filings were likely in nearly half of the class actions that reached a court order on certification, and more than a quarter of total securities class actions. *See* Br. of Civil Procedure and Securities Law Professors as *Amici Curiae* in Support of Petitioner, Part II. The study estimated that the Second Circuit's approach would have induced additional protective filings in approximately 1175 class actions out of 4355 total class actions filed. *Id.* at Section II.B. That would spawn thousands more new cases than the estimated 1175 cases in which protective filings would be made, because *many* putative class members would have to bring individual filings in *each* case. *See* Pet. Br. 23-24 (noting that

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[2] *Available at* http://www.nera.com/content/dam/nera/publications/2016/2015_Securities_Trends_Report_NERA.pdf.

securities class actions often have thousands of members).

2. This proliferation of protective individual actions will seriously undermine defendants' interests in efficient, effective dispute resolution in several ways.

It will necessarily result in more time and resources expended on litigation that is wholly collateral to the merits of the dispute. For example, questions of whether (or which) individual actions should be stayed and which should proceed alongside the class action are likely to be contested. *See* Pet. Br. 23. And, if putative class members file separate actions to protect their rights, those actions may well be filed in different forums than the class action (as happened here), raising a multitude of procedural issues related to transfer, consolidation, and multidistrict litigation. *See* Br. of Public & Private Pension Funds as *Amicus Curiae* Supporting Pet. at 17-18, *Pub. Employees' Retirement Sys. of Miss. v. IndyMac MBS, Inc.*, 134 S. Ct. 1515 (2014) (No. 13-640) ("*IndyMac* Pension Fund *Amicus* Br.").

Defendants will thus be forced to spend time and resources needlessly, to resolve *where* and *how* the case will proceed—issues that do not further the resolution of the merits at all, much less in a streamlined fashion. *Cf. Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (eschewing jurisdictional rules that "complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims").

Even if plaintiffs choose to protect their rights through intervention rather than a separate action,

protective filings will require ancillary litigation that is inconsistent with a streamlined resolution of the dispute. "Putative class members frequently are not entitled to intervene as of right under Fed. Rule Civ. Proc. 24(a), and permissive intervention under Fed. Rule Civ. Proc. 24(b) may be denied in the discretion of the District Court." *Crown, Cork & Seal*, 462 U.S. at 350 n.4. Intervention may not be welcomed by the named plaintiffs, and it therefore is likely to become yet another complex case-management issue that must be litigated. *See IndyMac* Pension Fund *Amicus* Br. at 15-16. Moreover, many intervenors may be investors proceeding *pro se*, who often require more resources from courts and defendants alike. *See* Br. of Retired Fed. Judges as *Amici Curiae* in Support of Certiorari, at 17.

Beyond the additional procedural complexity of the litigation, the increased protective filings will almost certainly complicate the substantive resolution of the case, and defendants are significantly less likely to be able to resolve suits in a timely fashion. Individual investors that have retained independent counsel and intervened or filed a separate suit are likely to frame the case differently from class counsel and to have independent approaches to discovery and motion practice. *See, e.g.*, Pet. Br. 22-23; *IndyMac* Pension Fund *Amicus* Br. at 17-18. This has several deleterious consequences for defendants: it requires them to fight multiple small battles with different individual investors on similar, but not identical, issues—rather than permitting a streamlined resolution of the merits under experienced lead counsel, as Congress anticipated, in enacting securities litigation reforms. *See infra*, Part II. And

casting away *American Pipe* will almost certainly prolong the time it takes to resolve the litigation, which is already, in general, quite long for most securities cases. *See* Pet. Br. 26-27 & n.5 (collecting examples of long-running securities cases).

Furthermore, the multiplication of individual suits in different forums arising out of the same transaction will substantially undercut defendants' ability to dispose of non-meritorious cases at an early stage through dismissal of the case for the entire class. Motions to dismiss are filed in roughly 96 percent of securities class actions. Starykh & Boettrich, *supra*, at 19. The heightened pleading standard for fraud-based claims embodies congressional intent to further early resolution of cases that have no merit. Declining to apply *American Pipe*, and adopting a rule that spawns multiple individual protective filings in securities class actions, will substantially undermine the ability of defendants to achieve early, and conclusive, resolution of cases that lack merit.

There is no repose "payoff" that would make up for these additional costs imposed on defendants from declining to apply *American Pipe*. Nor will there be less litigation due to individual claims failing the three-year bar. Jettisoning *American Pipe* will perversely result in *more* litigation as investor-plaintiffs necessarily respond by filing protective individual claims to protect their rights.

II. PRESERVING APPLICATION OF *AMERICAN PIPE* IS CONSONANT WITH CONGRESS'S SECURITIES LITIGATION REFORM EFFORTS.

1. Encouraging needless litigation and a multiplicity of individual suits on claims more efficiently resolved by class actions not only defeats the purposes of Rule 23, it thwarts securities litigation reforms. Congress has undertaken significant reforms based on its recognition that "[p]rivate securities fraud actions ... if not adequately contained, can be employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law." *Tellabs, Inc., v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Congress has consistently legislated in the securities litigation arena to promote the streamlining of cases, discourage proliferation of competing needless actions, and minimize costs to litigants while at the same time ensuring that deserving cases receive full attention and sufficient judicial resources.

In 1995, Congress enacted the Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 757 (1995), to "implement[] needed procedural protections" and "to discourage frivolous litigation." H.R. REP. NO. 104-369, at 31-32 (1995) (Conf. Rep.). In doing so, "Congress recognized that although private securities-fraud litigation furthers important public-policy interests, prime among them, deterring wrongdoing and providing restitution to defrauded investors, such lawsuits have also been subject to abuse, including the 'extract[ion]' of 'extortionate "settlements"' of frivolous claims. *Amgen*

Inc. v. Conn. Ret. Plans & Trust Funds, 133 S. Ct. 1184, 1200 (2013) (quoting H.R. REP. NO. 104–369, at 31-32).

Key PSLRA measures passed in response to such perceived abuses included "heightened pleading requirements" for securities-fraud actions, limitations on recoverable damages and attorney's fees, provision of a "safe harbor" for forward-looking statements, imposition of new restrictions on the selection of (and compensation awarded to) lead plaintiffs, mandatory imposition of sanctions for frivolous litigation, and authorization of a stay of discovery pending resolution of any motion to dismiss. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81–82 (2006). *See also* 15 U.S.C. § 78u–4. These provisions work to strengthen investor control over securities litigation and encourage the expeditious resolution of securities-fraud actions on the merits, at the earliest moment.

Congress later fortified the PSLRA by enacting the Securities Litigation Uniform Standards Act of 1998, Pub. L. 105-353, 112 Stat. 3227 (SLUSA), which curtailed plaintiffs' ability to evade the PSLRA's limitations on federal securities-fraud litigation by bringing class action suits under state rather than federal law. *See* 15 U.S.C. § 78bb(f)(1).

In enacting these laws, Congress sought to curtail the spread of needless actions and to provide meritorious cases with better representation and more judicial resources. But, far from containing any perceived explosion of securities-fraud cases, abandoning the settled procedural regime established under *American Pipe* and its progeny would instead

foment one. Instead of encouraging investors to work together and pool efforts under the leadership of a plaintiff with the most at stake, and therefore presumptively best-suited to represent all, each plaintiff would be compelled to strike out on its own. And rather than navigating a steady course in one action with discovery stayed pending resolution of motions to dismiss, defendants instead would be playing whack-a-mole, as forced protective actions pop up across the country, each with its own discovery timetable and theory of the case. *See also supra* Part I.C.

2. Such chaos is not what Congress wanted. Congress is understood to legislate against a background of common-law adjudicatory principles. *See generally Briscoe v. LaHue*, 460 U.S. 325 (1983). Thus, when Congress enacts a statute, related judge-made law (like the *American Pipe* rule) remains in force and works in conjunction with the new statute absent a clear indication otherwise. *See, e.g., Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 267 (1992); *Midlantic Nat'l Bank v. N.J. Dep't of Envt'l Protection*, 474 U.S. 494, 501 (1986). To be sure, this maxim serves only as an analytical starting point, and may give way if the common law conflicts with statutory purpose, *see Astoria Federal Savings & Loan Assn. v. Solimono*, 501 U.S. 104, 108 (1991), or if the statutory language plainly evinces Congress's intent to depart from past practice, *see Pa. Pub. Welfare Dep't v. Davenport*, 495 U.S. 552, 563 (1990).

There are no such indications here. *American Pipe* serves the same purposes as Congress's securities litigation reforms: streamlining litigation, preserving

the efficiency of class actions, and avoiding a multiplicity of actions when litigants (and the courts) are better served by resolving cases under the class rubric. Congressional silence on *American Pipe*, in the U.S. Code, and in the volumes of legislative history—despite repeated reforms of class actions in general and securities class actions in particular—therefore speaks volumes. Congress could amend Rule 23 to overrule *American Pipe*, or clarify that specific time bars may only be satisfied through the filing of individual actions, not class actions, but has never done so.

Nor are there indications in the legislative history that Congress ever so contemplated. If anything, the few fleeting references to *American Pipe* throughout the legislative history of class action and securities litigation reform statutes that *Amici* are aware of confirm congressional support for this settled judge-made rule of federal civil procedure, one grounded in principles of sound judicial administration.[3]

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[3] *See, e.g.*, H.R. REP. No. 105-702, at 17 (1998) (Report of the H.R. Comm. on the Judiciary on H.R. 3789) (briefly referencing *American Pipe* and clarifying that the Class Action Jurisdiction Act of 1998 preserves its holding, stating, "[i]mportantly, Section Three [of the bill] states that the period of limitations for any claim remanded to the state court on behalf of any member, named or unnamed, of any proposed class shall be tolled to the full extent provided under federal law."); *see also Securities Investor Protection Act of 1991: Hearing on S. 1533 Before the Subcomm. on Securities of the S. Comm. on Banking, Housing, and Urban Affairs*, 102d Cong. 22 n.10 (1992) (statement of Richard C. Breenan, Chairman, US Securities and

Even changes made in 2002 to the hybrid limitations period of Section 9(e) of the 1934 Act (then one-year/three-years, now two-years/five-years) were made with nary a mention of *American Pipe*, in either the statute, or the legislative history. *See* 28 U.S.C. 1658(b); *see also, e.g.*, S. REP. No. 107-146, at 8 (2002). Section 9(e), of course, was the limitations period at issue in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). There, this Court held that the limitations periods in 9(e) applied to Section 10(b) claims, and in the process, rejected equitable tolling for the longer period, deeming it a statute of repose. *Id.* at 360, 363.

When, in 2002, Congress extended the 9(e) limits, federal courts were consistently holding that *American Pipe* applied to statutes of "repose" in securities actions. *See, e.g., Joseph v. Wiles*, 223 F.3d 1155, 1168 (10th Cir. 2000); *In re Discovery Zone Sec. Litig.*, 181 F.R.D. 582, 600 n.11 (N.D. Ill. 1998); *Salkind v. Wang*, No. CIV.A. 93-10912-WGY, 1995 WL 170122, at *3 (D. Mass. Mar. 30, 1995); *Mott v. R.G. Dickinson & Co.*, No. 92-1450-PFK, 1993 WL 63445, at *5 (D. Kan. Feb. 24, 1993). And they were uniformly applying *American Pipe* to allow "legal tolling" notwithstanding *Lampf*'s foreclosure of equitable tolling. If Congress wanted to set aside the well-established *American Pipe* rule, one can safely assume that it would have done so when amending the very statute of limitations at issue in *Lampf*. But

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Exchange Commission) (referencing *American Pipe* to note that "[i]ndependent of any equitable tolling concepts, courts toll the running of statutes of limitations upon the commencement of class actions for the benefit of the members of the class").

Congress remained silent, yet again implicitly blessing an established procedural regime that is fully consistent with its statutory goals.

In sum, Congress has enacted significant reforms to securities class action procedures and made repeated amendments to general class action procedures without referencing the decades of precedent applying *American Pipe*. Such "long congressional acquiescence" is further reason for this Court to maintain course and hold that *American Pipe* applies to satisfy Section 13's three-year bar for all class members. *Cf. Kimble v. Marvel Entertainment, LLC*, 135 S. Ct. 2401, 2409-2410 (2015) (recognizing the strength of stare decisis in statutory rulings, especially when there is "long congressional acquiescence" in the holding at issue).

CONCLUSION

For the foregoing reasons, the judgment of the Second Circuit should be reversed.

Respectfully submitted.

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